

1 DAVID E. KLEINFELD (SBN 110734)
2 dkleinfeld@foley.com
3 FOLEY & LARDNER LLP
4 11250 El Camino Real, Suite 200
5 San Diego, California 92130
6 Tel: 858.847.6700
7 Fax: 858.792.6773

8 ROBERT S. WEISBEIN (pro hac vice)
9 rweisbein@foley.com
10 FOLEY & LARDNER LLP
11 90 Park Avenue
12 New York, New York 10016-1314
13 Tel: 212.682.7474
14 Fax: 212.687.2329

15 Attorneys for Defendants Sara Lee Corporation,
16 Sara Lee Bakery Group, Inc., and
17 Earthgrains Baking Companies, Inc.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BBU, INC., BIMBO BAKERIES USA, INC.,
ARNOLD PRODUCTS, INC., ARNOLD
SALES COMPANY, INC., and ARNOLD
FOODS COMPANY, INC.,

Plaintiffs,

v.

SARA LEE CORPORATION, SARA LEE
BAKERY GROUP, INC. EARTHGRAINS
BAKING COMPANIES, INC., and DOES 1-
10, inclusive,

Defendants.

Case No: 09-CV-1787-DMS (RBB)

**DECLARATION OF JUANITA
RODRIGUEZ IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Dana M. Sabraw
Hearing Date: September 11, 2009
Time: 1:30 p.m.
Courtroom: 10

DECLARATION OF JUANITA RODRIGUEZ

I, Juanita Rodriguez, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. This Declaration is submitted in support of defendants Sara Lee Corporation, Sara Lee Bakery Group, Inc. Earthgrains Baking Companies, Inc., in support of their opposition to plaintiffs,' BBU, Inc., Bimbo Bakeries USA, Inc., Arnold Products, Inc., Arnold Sales Company, Inc., and Arnold Foods Company, Inc., ("Arnold") motion for preliminary injunction.

2. I am a paralegal at the law firm of Foley & Lardner LLP, which is counsel for Sara Lee in this action. If called to testify in this matter, I could and would testify to the following facts, which are based on my personal knowledge.

3. Attached hereto as **Exhibit 1** is a true and correct copy of a screenshot from Sara Lee's website printed on August 28, 2009.

4. Attached hereto as **Exhibit 2** is a true and correct copy of federal trademark Registration No. 3,576,880 for the mark EARTHGRAINS and the corresponding registration status report, which I downloaded from the United States Patent and Trademark Office's ("USPTO") website on August 26, 2009.

5. Attached hereto as **Exhibit 3** is a true and correct copy of a screenshot from Earthgrains website printed on August 28, 2009; and true and correct copies of photographs of 100% NATURAL EARTHGRAINS bread purchased from Jewel-Osco store on August 31, 2009.

6. Attached hereto as **Exhibit 4** is a true and correct copy of a screenshot from the Earthgrains website regarding The Nature Conservancy printed on August 28, 2009; and a true and correct copy of a photograph of the back of a 100% NATURAL EARTHGRAINS bread regarding The Nature Conservancy purchased from Jewel-Osco store on August 31, 2009.

7. Attached hereto as **Exhibit 5** is a true and correct copy of a screenshot from Arnold's website regarding the history of Arnold, printed on August 27, 2009.

8. Attached hereto as **Exhibit 6** is a true and correct copy of a screenshot from Arnold's website regarding the ARNOLD SELECT buns and rolls printed on August 28, 2009;

1 and true and correct copies of photographs of ARNOLD SELECT rolls purchased from Sentry
2 Food Store on August 30, 2009.

3 9. Attached hereto as **Exhibit 7** is a true and correct copy of photographs of the
4 ARNOLD SELECT SANDWICH THINS products.

5 10. Attached hereto as **Exhibit 8** is a true and correct copy of federal trademark
6 Registration No. 3,637,950 for the mark SANDWICH THINS and the file wrapper, which I
7 downloaded from the USPTO website on August 28, 2009.

8 11. Attached hereto as **Exhibit 9** is a true and correct copy of federal trademark
9 Registration No. 1,022,799 for the mark WHEAT THINS and the corresponding registration
10 status report, which I downloaded from the USPTO website on August 26, 2009; and a true and
11 correct copy of a photograph of Nabisco WHEAT THINS purchased from D'AG NYC store on
12 August 20, 2009.

13 12. Attached hereto as **Exhibit 10** is a true and correct copy of federal trademark
14 Registration No. 1,244,724 for the mark VEGETABLE THINS and the corresponding
15 registration status report, which I downloaded from the USPTO website on August 26, 2009; and
16 true and correct copy of a photograph of Vegetable Thins purchased from Treasure Island store
17 on August 23, 2009.

18 13. Attached hereto as **Exhibit 11** is a true and correct copy of federal trademark
19 Registration No. 1,982,930 for the mark PITA THINS and the corresponding registration status
20 report, which I downloaded from the USPTO website on August 26, 2009.

21 14. Attached hereto as **Exhibit 12** is a true and correct copy of federal trademark
22 Registration No. 1,590,093 for the mark GARDEN CHICKEN THINS and the corresponding
23 registration status report, which I downloaded from the USPTO website on August 26, 2009.

24 15. Attached hereto as **Exhibit 13** is a true and correct copy of federal trademark
25 Registration No. 1,926,608 for the mark SWEET THINS and the corresponding registration
26 status report, which I downloaded from the USPTO website on August 26, 2009.

27 16. Attached hereto as **Exhibit 14** is a true and correct copy of federal trademark
28 Registration No. 2,143,587 for the mark NUT-THINS and the corresponding registration status

1 report, which I downloaded from the USPTO website on August 26, 2009; and a true and correct
2 copy of a photograph of Almond NUT-THINS purchased from DeCicco Family Markets store
3 on August 21, 2009

4 17. Attached hereto as **Exhibit 15** is a true and correct copy of federal trademark
5 Registration No. 2,887,828 for the mark WAFER THINS and the corresponding registration
6 status report, which I downloaded from the USPTO website on August 26, 2009; and a true and
7 correct copy of a photograph of WAFER THINS purchased from Dominick's store on August
8 19, 2009.

9 18. Attached hereto as **Exhibit 16** is a true and correct copy of federal trademark
10 Registration No. 2,883,979 for the mark BAKED POTATO THINS and the corresponding
11 registration status report, which I downloaded from the USPTO website on August 26, 2009.

12 19. Attached hereto as **Exhibit 17** is a true and correct copy of federal trademark
13 Registration No. 3,212,339 for the mark WATERTHINS and the corresponding registration
14 status report, which I downloaded from the USPTO website on August 26, 2009; and a true and
15 correct copy of a photograph of WATERTHINS purchased from Pathmark store on August 20,
16 2009.

17 20. Attached hereto as **Exhibit 18** is a true and correct copy of federal trademark
18 Registration No. 1,339,385 for the mark GOURMET THINS and the corresponding registration
19 status report, which I downloaded from the USPTO website on August 26, 2009.

20 21. Attached hereto as **Exhibit 19** are true and correct copies of the application status
21 report for the mark THINNY THIN THINS, Application No. 77/485970, which I downloaded
22 from the USPTO website on August 26, 2009, and a screenshot of a CT Corsearch website page
23 showing the product.

24 22. Attached hereto as **Exhibit 20** are true and correct copies of the corresponding
25 application status report for the mark ChrispiThins, Application No. 77-775827, which I
26 downloaded from the USPTO website on August 26, 2009, and a screenshot of the applicant's
27 website indicating that the mark is in use.
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1 23. Attached hereto as **Exhibit 21** is a true and correct copy of a photograph of Andes
2 – Crème De Menthe Thins purchased from A&P store on August 20, 2009.

3 24. Attached hereto as **Exhibit 22** are true and correct copies of a photographs of
4 Jules Destrooper – Almond Thins purchased from A&P store on August 20, 2009, and the
5 Chocolate Thins, and Ginger Thins purchased from DeCicco on August 21, 2009.

6 25. Attached hereto as **Exhibit 23** is a true and correct copy of a photograph of Red
7 Oval Farms – Stoned Wheat Thins purchased from D'AG NYC store on August 20, 2009.

8 26. Attached hereto as **Exhibit 24** are true and correct copies of photographs of
9 Anna's Ginger Thins and Blueberry Flavored Thins purchased from DeCicco Family Markets
10 store on August 21, 2009.

11 27. Attached hereto as **Exhibit 25** is a true and correct copy of a photograph of Rold
12 Gold Thins Pretzels purchased from Bistro Marketplace store on August 26, 2009.

13 28. Attached hereto as **Exhibit 26** is a true and correct copy of a photograph of
14 Sesmark Savory Thins purchased from The Food Emporium store on August 27, 2009.

15 29. Attached hereto as **Exhibit 27** is a true and correct copy of a photograph of
16 Walkers Shortbread Lemon Thins purchased from Dominick's store on August 19, 2009.

17 30. Attached hereto as **Exhibit 28** is a true and correct copy of a page from Amazon's
18 website page regarding Back to Nature Rice Thins printed dated August 27, 2009.

19 31. Attached hereto as **Exhibit 29** is a true and correct copy of a page from Truco
20 Enterprises' website page regarding On The Border's Cantina Thins Tortilla Chips printed
21 August 26, 2009.

22 32. Attached hereto as **Exhibit 30** are true and correct copies of a page from Fran's
23 Chocolates' website pages regarding Fran's Chocolate Thins printed August 28, 2009.

24 33. Attached hereto as **Exhibit 31** is a true and correct copy of a page from
25 Glutensmart's website page regarding Real Foods Corn Thins printed August 20, 2009; a page
26 from Real Foods' website printed August 31, 2009 showing the Corn Thins products; pages from
27 Vitantonline's website pages regarding Real Foods Rice Thins printed August 20, 2009, and a
28 page from Real Foods' website printed August 31, 2009 showing the Rice Thins products.

1 34. Attached hereto as **Exhibit 32** is a true and correct copy of a page from Oh Nuts'
2 website page regarding Paskaez Potato Thins printed August 20, 2009.

3 35. Attached hereto as **Exhibit 33** is a true and correct copy of a screenshot from
4 Pepperidge Farm's website page regarding Pretzel Thins printed on August 20, 2009.

5 36. Attached hereto as **Exhibit 34** are true and correct copies of pages from
6 Typetive's website regarding Roca Buttercrunch Thins printed August 20, 2009.

7 37. Attached hereto as **Exhibit 35** is a true and correct copy of a page from
8 Barcodepedia.com website regarding SnackWell's Potato Thins printed August 20, 2009.

9 38. Attached hereto as **Exhibit 36** is a true and correct copy of a page from
10 Netgrocer's website regarding Karen's Cookie Thins printed August 20, 2009.

11 39. Attached hereto as **Exhibit 37** is a true and correct copy of a page from
12 Netgrocer's website regarding Herr's Pretzel Thins printed August 20, 2009.

13 40. Attached hereto as **Exhibit 38** is a true and correct copy of a page from
14 Netgrocer's website regarding Bachman Pretzel Thins printed August 20, 2009.

15 41. Attached hereto as **Exhibit 39** are true and correct copies of pages from Eli
16 Zabar's website regarding Onion Thins, Caraway Thins, Sesame Thins, Black Pepper Thins,
17 Parmesan Thins, and Olive Rosemary Thins printed August 28, 2009.

18 I state under the penalty of perjury under the laws of the United States of America that
19 the foregoing is true and correct.

20 Date: August 31, 2009

21 at

C. Chicago, IL


Juanita Rodriguez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing documents has been served on August 31, 2009 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

/s/

David E. Kleinfeld

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